

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES	)	
COMPANY FOR CERTIFICATES OF PUBLIC	)	CASE NO.
CONVENIENCE AND NECESSITY AND	)	2011-00161
APPROVAL OF ITS 2011 COMPLIANCE PLAN	)	
FOR RECOVERY BY ENVIRONMENTAL	)	
SURCHARGE	)	

APPLICATION OF LOUISVILLE GAS AND	)	
ELECTRIC COMPANY FOR CERTIFICATES OF	)	CASE NO.
PUBLIC CONVENIENCE AND NECESSITY AND	)	2011-00162
APPROVAL OF ITS 2011 COMPLIANCE PLAN	)	
FOR RECOVERY BY ENVIRONMENTAL	)	
SURCHARGE	)	

O R D E R

On October 21, 2011, a joint motion was filed in these unconsolidated cases by the Sierra Club and the National Resources Defense Council (collectively "Movants") requesting authority to take the depositions of three witnesses sponsored by the applicants, Kentucky Utilities Company and Louisville Gas and Electric Company ("KU/LG&E"). The Movants, along with certain named individuals, were collectively granted status as intervenors in Case Nos. 2011-00161 and 2011-00162.

The motion states that authorizing the request to take depositions will simplify and clarify the issues in these cases, thereby saving time and resources of the Commission and the parties. The motion also states that while KU/LG&E did respond to written discovery requests submitted by the Movants, the restricted nature of that discovery hinders their ability to fully understand certain of the issues and it would be

more efficient to explore those issues by way of depositions rather than at the hearing. Further, the motion claims that taking depositions will help to eliminate the element of surprise that might occur at the hearing if the KU/LG&E witnesses were to provide new information or support for their positions. Finally, the motion notes that since KU/LG&E will be filing rebuttal testimony, depositions will allow Movants to explore the bases and assumptions underlying that testimony.

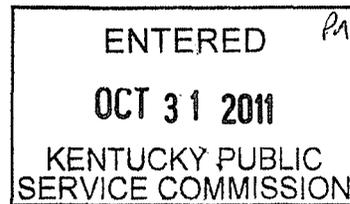
KU/LG&E filed a response on October 26, 2011 objecting to the motion. KU/LG&E state that depositions are not needed when the witnesses sought to be deposed have filed testimony and will be available at hearing commencing on November 9, 2011 where all parties will have the opportunity to cross-examine them. KU/LG&E also state that with the significant amount of data they have already filed in response to discovery, along with their prepared testimony, there can be no basis for Movants to claim surprise on any issue and it would be inefficient for the parties to convene twice within two weeks to examine the same witnesses. Finally, KU/LG&E state that the motion is untimely, the procedural schedules established for these cases did not provide for the taking of depositions, and that any request for depositions should have been made months ago during the discovery stage of these cases.

Based on the motion and being otherwise sufficiently advised, the Commission finds that while depositions have been authorized on limited prior occasions, depositions were only allowed during the discovery phase and based on a finding that written information requests were insufficient to enable a party to adequately present a claim or a defense. Here, the three witnesses sought to be deposed have each filed prepared direct testimony, they have been subject to two rounds of requests for

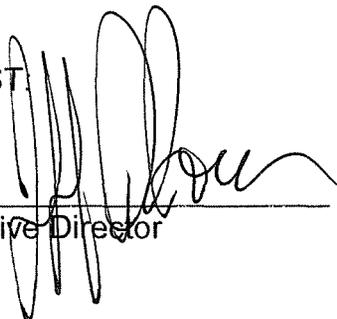
information, and they recently filed prepared rebuttal testimony. The Movants have already filed their prepared direct testimony, and they too have been subject to requests for information. The Movants have not shown good cause for the need for additional discovery by way of depositions at this late stage of the proceedings. Rather, taking depositions now would most likely result in issues being tried and witnesses being cross-examined outside the presence of the Commission. As the trier of fact and decision maker, it is imperative that the issues in this case be heard before the Commission.

IT IS THEREFORE ORDERED that the Movants' joint request to take the depositions of three KU/LG&E witnesses is denied.

By the Commission



ATTEST:

  
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Executive Director

Case No. 2011-00161  
Case No. 2011-00162

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